POON SOK TIAN & ORS.

v.

LEE INVESTMENT (S) PTE. LTD. & ORS.

HIGH COURT, SINGAPORE
KAN TING CHIU JC
[SUIT NO. 2043/90]
31 JULY 1991

PAWNBROKERS: *Deposits made with pawnbrokers - Whether contrary to conditions imposed by Registrar of Pawnbrokers - Whether fixed deposits or loan - Whether prohibition against borrowing - Whether moneylending - Moneylenders Act [Sing], s. 15 - Pawnbrokers Act [Sing], s. 8(2) - Conditions for grant of Pawnbrokers' Licence.*

PARTNERSHIP: *Ostensible or implied authority - Partnership Act 1890 [UK], s. 5.*

The plaintiffs/respondents obtained summary judgment for $445,100 which they deposited with a partnership (owned by the defendants) between 1983 and 1990. The defendants appealed, raising three arguments which the defendants contended raised triable issues - first that the deposits were *ultra vires* the Pawnbrokers Act and therefore illegal, second that they were moneylending transactions contrary to the Moneylenders Act and thirdly, that the deposits were accepted by the third defendant without their authority.

Held:

[1] As there was no evidence that the loans were for fixed periods, they were not fixed deposits.

[2] The appellants did not show how the loans come within the prohibition against borrowing from private individuals in Condition 2 of the Conditions for Grant of Pawnbrokers Licence 1990 (the Conditions). There is no doubt that Condition 1 of the Conditions prohibited acceptance of all loans from the public. There is nothing in the Pawnbrokers Act prohibiting such taking of deposits or loans which would render their contract unenforceable.

[3] For a person to be held to be a moneylender, it is necessary to show some degree of system and continuity in his moneylending transactions. The earning of interest from loans does not *per se* render a person a moneylender. The Moneylenders Act was intended to protect borrowers from exploitation by lenders. Where the borrowers are financial institutions, the Act should not be applied to protect such institutions from their depositors.

[4] For deposits accepted by the appellants before 1990, the appellants are bound on the ground of implied or ostensible authority by virtue of s. 5 of the Partnership Act 1890. For deposits taken in 1990, s. 5 of the Partnership Act does not apply because the 1990 conditions have prohibited borrowing from the public and such borrowing can no longer be considered part of the usual business of any pawnbroker. The question of the third defendant's authority therefore becomes a triable issue.

[Appeal allowed to the extent that the judgment for the plaintiffs' full claim be set aside and be substituted by the following orders:

(a) judgment for the plaintiffs for all loans before 1990; and

(b) the defendants be given leave to defend the plaintiffs' claim for loans made in 1990]

Cases referred to:
Mary-Ann Arrichiello v. Tanglin Studio Pte. Ltd. [1981] 2 MLJ 60 ***(cit)***
Foo Kee Boo & Anor. v. Ho Lee Investments (Pte.) Ltd. [1988] 3 MLJ 128 ***(cit)***
Yeep Mooi v. Chu Chin Chun & Ors. [1981] 1 MLJ 14 ***(foll)***
Mercantile Credit Co. v. Garred & Anor. [1962] 3 All ER 1103 ***(cit)***
United Bank of Kuwait Ltd. v. Hammoud & Ors. [1988] 1 WLR 1051 ***(cit)***

Legislation referred to:
Moneylenders Act [Sing], s. 15
Partnership Act 1890 [UK], s. 5
Pawnbrokers Act [Sing], ss. 5, 8(2)

For the appellants/defendants - Leslie Chew
For the respondents/plaintiffs

JUDGMENT

Kan Ting Chiu JC:

The defendants were the partners of Ban Loke Pawnshop (the pawnshop), a business licensed under the Pawnbrokers Act, which has now ceased operations. The plaintiffs/respondents claimed against the defendants the sum of $445,100 which they deposited with the pawnshop between 1983 and 1990. These loans were acknowledged in receipts of the pawnshop issued to the respondents.

The respondents applied for summary judgment against the defendants. The third defendant, the manager of the pawnshop, consented to judgment. The other three defendants contested the application, which resulted in judgment being entered against them as well.

On appeal against the judgment, Counsel for appellants (the first, second and fourth defendants) raised three arguments which he contended were triable issues. He alleged firstly that deposits were illegal under the Pawnbrokers Act, secondly that the transactions were moneylending transactions prohibited under the Moneylenders Act insofar as the plaintiffs were not licensed moneylenders and thirdly, that the third defendant had accepted the deposits without the authority of the appellants and they were not bound by these unauthorised acts.

The Pawnbrokers Act Issue

Counsel for the appellants contended that as the Pawnbrokers Act does not expressly permit the borrowing of money by pawnbrokers and since the business of pawnbroking is governed by the Act, such borrowing are *ultra vires* the Act. He did not cite any authority for this proposition, which was inconsistent with the licence conditions which he relied on.

The conditions are those that the Registrar of Pawnbrokers impose under s. 8(2) of the Pawnbrokers Act for the grant and renewal of pawnbrokers' licences. These conditions are issued annually and are called the conditions for the grant of pawnbrokers' licence for that year.

For the period of the plaintiffs' loans the relevant conditions fall into three phases, 1983 to 1988, 1989, and 1990. From 1983 to 1988, conditions 1 and 2 provide that:

1. No pawnbroker shall accept any fixed deposits from the public.

2. No pawnbroker shall borrow from private individuals other than his own directors, shareholders or partners, except for those who were licensed to carry on pawnbroking business before 2 June 1980. In respect of the latter, their total borrowing from private individuals (excluding their own directors, shareholders or partners) shall not, at any time, exceed their total capital funds (paid-up capital plus reserves, if any). All such borrowing

shall be fully covered by the total stock of pledges held by them at all times. Where a pawnbroker borrows from private individuals the lenders shall be informed that their loans are not fixed deposits. Word to this effect shall be printed on the loan receipts.

For 1989, condition 1 was retained but condition 2 was amended to read:

2. No pawnbroker shall borrow from private individuals other than from his own directors, shareholders or partners, except for those who have been licensed to carry on pawnbroking business before 2 June 1980. For those licensed before 2 June 1980, their total borrowing from private individuals (excluding their own directors, share-holders or partners) shall not, at any time, exceed their total capital (paid-up capital plus reserves, if any) and shall also not exceed the amount borrowed as at 31 December 1988. All such borrowing shall be fully covered by the total stock of pledges held by them at all times.

In 1990, both conditions were changed to read:

1. No pawnbroker shall accept any fixed deposits or borrow money from the public.

2. Pawnbrokers who had been licensed to carry on pawnbroking business before 2 June 1980 and have borrowing from public are:

(a) required to take immediate action to phase out their public borrowing with a minimum monthly average refund of the amount of such borrowing as at 31 December 1989 and must refund all their public borrowing by 31 December 1990; and

(b) not allowed to renew or accept new public borrowing.

The appellants' Counsel argued that the taking of the loans were illegal transactions prohibited by the conditions but he did not show how the borrowing were fixed deposits. In fact, each receipt issued by the pawnshop stated expressly that:

This is a receipt for a loan, not a fixed deposit.

In the absence of any evidence that the loans were for fixed periods, I cannot agree that they were fixed deposits.

The appellants also did not show how the loans come within the prohibition against borrowing from private individuals in condition 2 in its first two forms. Their Counsel accepted that the pawnshop was first licensed before 2 June 1980. The forms of condition 2 in force from 1983 to 1988 and in 1989 were not absolute prohibitions against such borrowing by pawnbrokers licensed before 2 June 1980. They set limits to such borrowing, but it was not alleged by the appellants that the limits were exceeded by the pawnshop.

There is no doubt that condition 1 of the 1990 conditions prohibited acceptance of all loans from the public. The question is whether the contravention of any of the conditions will constitute an act of illegality sufficient to render any contract so tainted to be unenforceable.

To deal with this issue, the status of the specific prohibition and the conditions must be considered. Nowhere in the Pawnbrokers Act is it stated that pawnbrokers are prohibited from taking deposits or loans, nor is there any prohibition against making loans to them, nor any provision that contracts for such deposits or loans are unenforceable. As a necessary corollary, there is no penalty prescribed for the making or taking of such deposits or loans.

These conditions were issued by the Registrar of Pawnbrokers under s. 8(2) of the Pawnbrokers Act which provides that:

Licences shall be subject to such conditions, if any, as may be imposed by the Registrar ...

The penalty for contravening such conditions is that the licence may be cancelled pursuant to s. 10(1)(c) of the Act.

Even if there is a statutory prohibition against accepting loans, that does not necessarily mean that the loans are irrecoverable. The purpose and effect of the prohibition must be considered. This was made clear in *Mary-Ann Arrichiello v. Tanglin Studio Pte. Ltd*. [1981] 2 MLJ 60 and *Foo Kee Boo & Anor. v. Ho Lee Investments (Pte.) Ltd*. [1988] 3 MLJ 128, decisions dealing with the Housing Developers (Control and Licensing) Act and the Housing Developers Rules 1976. In both cases, the defendants were licensed housing developers which were required to use the forms of options and agreements of sale and purchase set out in the Rules. After having issued an option and an agreement in forms other than the prescribed forms, the developers took the position that the documents were illegal and therefore unenforceable.

Chua J in the first case rejected the argument and said that:

> Each licence could have its own limitations. Whether or not a developer is under an impediment is personal only to the developer.
>
> The penalty for the breach of any condition of a housing developer's licence is provided for in s. 4(8) of the Act. The controller may revoke the licence ... Nowhere does the Act nullify or avoid any contract.

In the latter case, Grimberg JC also rejected the argument. He said:

> There was, undoubtedly, a breach of the Rules. What was the effect of the breach?
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> ... where ..., an option was granted in a form not authorised by the controller, in breach of r. 10(B)(3), it was the defendants, the developers, who were in breach of the Rules, and not the plaintiffs, the purchasers. That conclusion is consonant with the object and scheme of the Act. I conclude that neither the Act, nor the Rules made under it, were designed to impose criminal sanctions against a purchaser who transacted with a developer upon the basis of forms which did not comply with those found in the schedule to the Rules.

The purpose and effect of the requirement to use statutory forms and the prohibition against accepting loans are similar. They apply only to one party in the transaction (the developer in the first case and the pawnbroker in the second) and they do not expressly avoid or nullify the transaction. I do not accept the argument that the prohibition against taking loans renders the loans irrecoverable.

The Illegal Moneylending Issue

The appellants relied on the presumption that any person who lends a sum of money in consideration of a larger sum being repaid is a moneylender, and argued that since the respondents were not licensed as moneylenders their moneylending contracts are not enforceable under s. 15 of the Moneylenders Act.

The presumption must be considered together with the definition of "moneylender" in the Act to include "every person" whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business". Although the definition is not exhaustive, it is well established that for a person to be held to be a moneylender it is necessary to show some degree of system and continuity in his moneylending transactions.

The earning of interest from loans does not *per se* render a person a moneylender. If a person deposits money in banks or finance companies and earns interest on his deposits, it can hardly be suggested that unless he obtains a moneylender's licence, he is committing

an offence and he cannot recover his deposits. For the same reason if a person deposits money with pawnbrokers who accept deposits in the course of their business and earns interests on the deposits, he should not be regarded as a moneylender. The Moneylenders Act was intended to protect borrowers from exploitation by lenders. Where the borrowers are financial institutions which are very probably financially stronger than the individual lender, and which are themselves subject to strict regulation and control, the Moneylenders Act should not be applied to protect these institutions from their depositors.

I take comfort in the fact that my view is in accord with that of Salleh Abas FJ in delivering the judgment of the Federal Court in *Yeep Mooi v. Chu Chin Chun & Ors.* [1981] 1 MLJ 14, where he said of a person who deposits his extra money in a bank or any other financial institution as a saving against rainy days whilst at the same time earning some interest:

> Although such a person is in law a lender, he is certainly not a moneylender, even though he may repeatedly and frequently deposit money as and whenever he has some to spare. Repetition of similar deposits *per se* does not necessarily constitute a business, still less the business of moneylending.

The Authority Issue

The appellants alleged that the third defendant had accepted the deposits without their authority, and therefore they are not bound by nor liable for those unauthorised acts, notwithstanding that he was the manager of the pawnshop. They further contended that since the third defendant had asserted that he had accepted the deposits with the knowledge and consent of the appellants, this dispute is an issue which should go for trial.

The appellants did not consider implied or ostensible authority. Section 5 of the Partnership Act 1890 provides that:

> Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member binds the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

In *Lindley and Banks on Partnership*, 16th Edn., at para. 12-08, the effect of s. 5 is analysed as:

> (1) An act done by a partner on behalf of the firm and within the scope of his actual authority will bind the firm, whether or not the act was done in carrying on the partnership business in the usual way.
>
> (2) An act done by a partner on behalf of the firm in the course of carrying on the partnership business in the usual way, will *prima facie* bind the firm, even if the partner acted without authority, unless the third party with whom he dealt knew of that lack of authority or did not know or believe him to be a partner.
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> (3) An act done by a partner on behalf of the firm otherwise than in the course of carrying on the partnership business in the usual way will *prima facie* not bind the firm, in the absence of express authority or subsequent ratification by the other partners.

The business of a partnership is to be determined from the standpoint of the parties dealing with it and not by the partnership deed or other internal arrangements between the partners. The test is whether third parties dealing with the partnership would regard a particular transaction to be a part of the business of a partnership such as that with which they are dealing, see *Mercantile Credit Co. Ltd. v. Garrod & Anor*. [1962] 3 All ER 1103 and *United Bank of Kuwait Ltd. v. Hammoud & Ors.* [1988] 1 WLR 1051.

Put into the context of the present case, the issue is whether the plaintiffs reasonably believed that pawnbrokers generally accepted loans in the course of their business. From the foregoing consideration of the license conditions, it is clear that pawnbrokers can take loans up to 1989, subject to the conditions of their licences. The pawnshop in particular was authorised to take deposits up to 1989, and it did that. The receipts exhibited by the respondents were formal printed receipts of the pawnshop, individually numbered, bearing the lender's name, amount lent, rate of interest and date of loan. Each receipt also bore the rubber stamp of the pawnshop, the signature of its manager, and was affixed with a revenue stamp. The acceptance of the deposits and the issuance of the receipts was evidently a part of the usual business of the pawnshop. Even if it is assumed that the third defendant had accepted the deposits without the authority of the appellants, they are still liable towards third parties for the loans. I therefore reject this argument of the appellants in respect of the deposits accepted before 1990.

For the deposits taken in 1990, s. 5 does not apply. When the 1990 conditions prohibited borrowing from the public, such borrowing can no longer be considered to be a part of the usual business of any pawnbroker. The question of the third defendant's authority becomes an issue between the appellants and the respondents and judgment should not be entered against the appellants in respect of these loans.

In an affidavit affirmed on 26 March 1991 on behalf of the appellants by the second defendant, he admitted that he had met the first and fourth plaintiffs to discuss the repayment of the plaintiffs' loans on 10 October and 29 October 1990. While he specifically denied making any assurance to repay the loans, what he did not say is as significant as his denial. He did not say that he informed the first and fourth plaintiffs that the loans had been accepted by the third defendant without authority or that it was not a part of the pawnshop's business to accept loans. One would have expected him to have made these very clear at the meetings, when he was told of the substantial claims.

After having thus considered the appellants' arguments, I allow the appeal to the extent that the judgment for the plaintiffs' full claim be set aside and be substituted by the following orders:

(1) That judgment be entered for the plaintiffs for all the loans made before 1990, with interest at the rate of 1% per month from the date of each loan to the date of judgment.

(2) That the appellants have leave to defend the respondents' claims for the loans made in 1990 on the condition that they provide security by paying into Court an amount equivalent to the sum of the loans made in 1990 and interest accrued thereon at 1% per month from the date of each loan to the date of this order or by furnishing to those respondents who made loans in 1990, a bank guarantee in terms acceptable to those respondents for the same amount, such security to be furnished within 21 days.

(3) That each party bears it own costs in this appeal.

Also found at [1991] 3 CLJ 2715